

Utah Solid and Hazardous Waste Control Board
Utah Department of Environmental Quality (Bldg. #2)
168 North 1950 West (Room 101)
Meeting Minutes
February 12, 2009
1:30 p.m.

PRESENT: Carlton Christensen, John Newman, Michael Brehm, Kory Coleman, Gary Mossor, Kevin Murray, Dennis Riding, Craig Anderson, and Ryan Dupont.

ABSENT: Scott Bruce, Jeff Coombs, and Bill Sinclair.

STAFF: Dennis Downs, Brad Johnson, Scott Anderson, Shane Bekkemellom, Ed Costomiris, Marty Gray, Arlene Lovato, Dale Marx, Terry Montgomery, Matt Sullivan, Doug Taylor, Don Verbica, Otis Willoughby, and Raymond Wixom.

OTHER: Les Ashwood, Becki Bryant, David Gibby, Tim Orton, R. Jason Reed, Melissa Scales, Brent Stephens, Melaina Torsch, Sheila Vance, and Shane Whitney.

I. Call to Order

Carlton Christensen (Chair) called the meeting to order at 1:30 p.m. Scott Bruce and Bill Sinclair were excused from the meeting.

II. Approval of Meeting Minutes for the January 8, 2009 Board Meeting (Board Action Item)

Kory Coleman moved to approve the January 8, 2009 Board meeting minutes. The motion was seconded by Craig Anderson and **UNANIMOUSLY CARRIED**.

III. Underground Storage Tanks Update

Brad Johnson provided the Board members with an update on the current status of the Underground Storage Tank (UST) owner/operator certification program rules that the Division of Environmental Response and Remediation (Division) has been developing as part of the Federal Energy Policy Act of 2005 (Energy Act). After receiving initial comments from the Utah UST Advisory Task Force (Task Force), the Division sent a second draft of the rules to the Task Force to review. Once comments are received from this second draft, the rules will be distributed to a broader audience of interested parties to review. The rules will then be brought before the Board for approval to proceed with public comment and the formal rulemaking process. The Division will continue to update the Board on the status of the UST owner/operator certification program rules.

IV. Commercial/Federal Facilities Section.

A. Clean Harbors Grassy Mountain, LLC request for a site-specific treatment variance for waste codes D009 (Information Item).

Ed Costomiris discussed the Clean Harbors Grassy Mountain Facility request for a site-specific treatment variance received on January 20, 2009. The Grassy Mountain Facility seeks authorization to stabilize a waste stream that carries waste code D009 (High Mercury – Subcategory Inorganic). The treated waste will be disposed in a hazardous waste cell at the facility.

The Grassy Mountain Facility proposes to stabilize and dispose of two mercury waste streams from the Clean Harbors Aragonite Facility that carry the listed waste codes for High Mercury-Inorganic Subcategory. Both waste streams were generated from the air pollution control system at the Aragonite Facility. The technology-based treatment code for this waste is RMERC (roasting/retort followed by recovery). The RMERC process generates secondary waste streams. The secondary waste streams (when greater than 260 mg/kg mercury) are required to be further stabilized to a level of 0.025 mg/L based on the toxicity characteristic leaching procedure (TCLP) in SW846.

The Grassy Mountain Facility is proposing to treat the waste directly with a stabilization method rather than going through the initial retort or incineration of the waste. This proposal is made due to the corrosive nature of the waste stream, which is damaging to the equipment at the recovery facility and their declination to receive the waste. The hardship for Clean Harbors is that there currently is no alternative way for the company to dispose of this waste.

The Grassy Mountain Facility has conducted a treatability study on the waste stream. The formula developed for treating this waste stream resulted in no mercury being detected following treatment.

The Grassy Mountain Facility is proposing to stabilize the waste to a level below .2 mg/L, based on the TCLP. This would satisfy the high mercury subcategory requirement. In addition, LDR compliance will be met for all other waste codes associated with the waste prior to disposal.

This variance, if granted, would be valid for the 2009 calendar year. The Grassy Mountain Facility has requested a similar site-specific treatment variance for High Mercury (Inorganic Subcategory) Mercury. The Board approved that request in July 2005.

This is an informational item only. The 30-day public comment period will run from February 5, 2009 to March 9, 2009. A public hearing is scheduled to be held on February 17, 2009. The Executive Secretary will make a formal recommendation to the Board at the March 12, 2009 meeting.

Michael Brehm asked if the treatability study simulated disposal specifically or something else. Les Ashwood, Senior Compliance Manager for Grassy Mountain Facility explained that the treatability study was designed to find the right mix of chemicals and raw waste to achieve stabilization.

Dennis Riding asked about the amount of waste needing treatment under the variance. Mr. Ashwood stated there are six, 20-cubic yard rolloff boxes of ash waste and approximately forty, 55-gallon drums of scrubber mud waste. Mr. Riding noted that this kind of treatment had been done at the facility before. Mr. Ashwood confirmed that this procedure was done in 2005 and successfully met the stabilization requirements.

B. EnergySolutions LLC request for a site-specific treatment variance for waste codes D009 and U151 (High Mercury – Subcategory Inorganic) (Information Item)

Otis Willoughby discussed EnergySolutions' request for renewal of a site-specific treatment variance from the Utah Hazardous Waste Management Rules. EnergySolutions seeks authorization to stabilize a waste stream that carries waste code D009 or U151 (High Mercury – Subcategory Inorganic). The treated waste will be disposed at the Mixed Waste Landfill Cell. Mr. Willoughby stated that this variance, if granted, would be valid for the 2009 calendar year. EnergySolutions has requested similar site-specific treatment variances for High Subcategory Mercury. The Board approved those requests in January 2002, December 2003, June 2004, January 2005, January 2006, January 2007, and March 2008.

The waste that may be shipped over the next year has a volume of approximately 2500 cubic feet. The technology-based treatment codes for this material are either IMERC (incineration followed by recovery) or RMERC (roasting/retort followed by recovery). The RMERC and IMERC processes generate secondary waste streams. The secondary waste streams (when greater than 260 mg/kg mercury) are required to be further stabilized to a level of .2 mg/L based on the toxicity characteristic leaching procedure (TCLP) in SW846. EnergySolutions is proposing to treat the waste directly with a stabilization method rather than going through the initial retort or incineration of the waste. This proposal is due to the mixed waste nature of the waste stream, i.e. a hazardous waste with a radioactive component. The hardship for this case is that radioactive mercury cannot be recycled and would require extra handling of the waste.

The U.S. Environmental Protection Agency (EPA) has issued a Determination of Equivalent Treatment (DET) for such High Mercury Subcategory wastes. In its determination, the EPA concluded that, for wastes which contain mercury and are radioactive, the recovery portion of RMERC or IMERC may not be appropriate and that alternative treatment processes should be pursued.

EnergySolutions is proposing to stabilize the waste to a level below of 0.025 mg/L, based on the TCLP. This would satisfy the high mercury subcategory requirement. In addition, LDR compliance will be met for all other waste codes associated with the waste prior to disposal.

This is an informational item only. The 30-day public comment period will run from January 29, 2009 to March 2, 2009. A public hearing on this issue will be held in the Tooele County Courthouse on February 26, 2009. The Executive Secretary will make a formal recommendation to the Board at the March 12, 2009 meeting.

Otis Willoughby clarified that EnergySolutions is proposing to stabilize the waste to a level below 0.025 mg/L, (not .2 mg/L as stated in previous documentation), based on the TCLP.

Tim Orton, EnergySolutions representative, clarified that EnergySolutions is expecting to receive 2500 cubic feet over the lifetime of this project, not over the next year as previously discussed. Mr. Orton stated that 1982 cubic feet of waste has been received to date. Carlton Christensen asked how much waste is received on an annual basis. Mr. Orton stated that last year EnergySolutions received 950 cubic feet of waste. Prior to that, approximately 200 cubic feet had been received per year.

Ryan Dupont requested clarification on the .2 mg/L verses the 0.025 mg/L stabilization levels, as EnergySolutions' documentation references the .2 mg/L as well. Mr. Orton stated that typically the waste is treated to 0.2 mg/L not the 0.025 mg/L, because 0.2 mg/L is what is required if the waste is going through the process of IMERC or RMERC. Mr. Dupont requested that the required treatment standards be clarified before a final decision is made. Mr. Orton stated that the .025 mg/L is the treatment standard for soil, but will clarify these standards at the next meeting.

Michael Brehm asked if the correct information was submitted with the public notice or if further clarification is required. Mr. Willoughby explained that a specific treatment number is not included with the public notice.

V. Solid Waste Section

A. Stipulation and Consent Order between the Board and Arnie Clark (Board Action Item)

Matt Sullivan, Scientist for the Solid Waste Section, reviewed the Stipulation and Consent Order to resolve the Cease and Desist Order issued to Mr. Arnie Clark. Mr. Clark managed property in Glendale, Utah owned by Ms. Linda Richards. For an indeterminate amount of time, Mr. Clark allowed solid waste to be disposed on the property. Mr. Clark does not have a permit at this location for the operation of a solid waste landfill.

On September 3, 2008, the site was inspected with the assistance of the Kane County Sheriff deputies. A Cease and Desist Order was issued to Mr. Clark on September 25, 2008. Working with Mr. Clark's attorney, a Stipulation and Consent Order (SCO) was negotiated to resolve the Order. The SCO requires removal of all solid waste from the property and subsequent disposal at a permitted solid waste management facility and restoration of the property to its former status. The SCO does not include penalties.

A 30-day public comment period for this SCO began December 24, 2008 and ended January 26, 2009. No comments were received. The Executive Secretary recommends that the Board approve this SCO.

Craig Anderson noted that, at the last meeting, a statement was made that indicated that some profit was received from disposing the waste at this illegal landfill and that the SCO requires Mr. Clark to clean up the property. Mr. Anderson asked if there was a correlation between the profit made and the cost of the cleanup. Mr. Sullivan stated that he does not have that information and the SCO does not include any monetary penalties. Mr. Anderson asked if estimates were available indicating how much the cleanup costs will be. Mr. Sullivan explained that the site has not been cleaned up yet, and cleanup would commence once the SCO was signed by both parties.

It was motioned by John Newman and seconded by Michael Brehm and UNANIMOUSLY CARRIED to approve the Stipulation and Consent Order between the Board to resolve a Cease and Desist Order issued to Mr. Arnie Clark.

VI. Chemical Demilitarization

A. TOCDF Update

The TOCDF continues to process mustard ton containers and is also preparing to process HT mortars. TOCDF is currently systemizing and preparing plans for approval. Startup may occur as early as next month. When TOCDF begins processing the HT mortars, it will discontinue processing the mustard ton containers, as they do not multi-process any munitions. TOCDF will also have to complete an in-depth sampling program for the HT mortars that will be submitted to the Division for review before moving forward.

TOCDF is also continuing to work on modifications for secondary waste processing.

CAMDS is closing the pollution abatement system for the Metal Parts Furnace. This is the last pollution abatement system at the facility.

B. Stipulation and Consent Order between the Board and Dugway Proving Ground (Information Item)

Doug Taylor discussed the proposed Stipulation and Consent Order (SCO) to resolve Notice of Violation and Order for Compliance (NOV/CO) issued to Dugway Proving Ground on January 29, 2008.

The Division staff conducted Compliance Evaluation Inspections at Dugway from August 20, 2007 to September 25, 2007. Findings documented during these inspections led to issuance of the NOV/CO. Violations alleged in the NOV/CO include failure to follow approved plans while removing waste from SWMU's, failure to submit data to the Executive Secretary, and failure to notify the Executive Secretary about pending field work. The SCO includes a penalty of \$5,890.00 dollars.

The public comment period for this SCO began February 3, 2009 and will end on March 5, 2009. Following resolution of any public comments, this SCO will be brought back to the Board for final action at the March 2009 meeting.

Michael Brehm noted that the proposed SCO had been revised and requested clarification. Mr. Taylor explained that SCOs are negotiated with the facility, so often times revisions are made during the process.

VII. Other Business

A. Legislative Update

Dennis Downs provided a list of proposed legislation with potential impacts on solid and hazardous waste issues.

SJR 4 (McCoy) Recycling of Electronic Waste

This joint resolution of the Legislature urges the Utah Department of Environmental Quality to work with the Recycling Coalition of Utah to develop recommendations for addressing electronic waste and to encourage Utahns to reduce electronic waste and reuse or recycle electronic items. The Legislature also urges the Utah Department of Environmental Quality to continue working with the Coalition's Electronic Scrap Steering Committee and other interested stakeholders to assess electronic waste issues in the state and to report its findings and recommendations to the Natural Resources, Agriculture, and Environment Interim Committee of the Legislature by October 31, 2009. This bill has passed the Senate and has been assigned to a committee.

SB 70 (Dayton) Department of Environmental Quality Amendments

Raymond Wixom, Utah Attorney General's Office, explained that this bill amends provisions relating to adjudicative proceedings within the Department of Environmental Quality. This bill deals with the following: defines terms; authorizes the Executive Director of the Department of Environmental Quality to appoint an

administrative law judge; requires an administrative law judge to conduct all adjudicative proceedings within UDEQ, except an emergency adjudicative proceeding; establishes powers, duties, and qualifications for an administrative law judge; amends or repeals the powers of boards within the department regarding hearings, adjudicative proceedings, and hearing officers or examiners.

Michael Brehm questioned the intent of the proposed legislation. Mr. Wixom stated that the intent is to substitute an administrative law judge to do most of the work that has been performed by the Board in the past. Those supporting the bill are concerned that in many of the requests for agency action, much of the activity has to do with legal issues, procedural questions, etc. and feel it would be a more efficient use of resources to have an experienced attorney be the administrative law judge rather than have Board members with other backgrounds continue to perform these responsibilities. Also, a great deal of time is used by Boards to hear cases and in making decisions on cases, and those individuals supporting this bill feel this bill will resolve those issues.

Dennis Downs also stated that one other concern of the proponents of this bill is the timeliness and timing of hearings, realizing that is very difficult to schedule hearings when dealing with all the Board members' schedules versus one administrative law judge's schedule. The UDEQ has not taken a position on this bill. Mr. Downs stated that if the Board would like to address this issue, it must be done independent of the UDEQ. Once this bill is released from "protected" status, it will be emailed to Board members for review.

SB 132 (Mayne) Income Tax/Methamphetamine Cleanup.

Income Tax Contribution for Methamphetamine Housing Reconstruction and Rehabilitation Fund, sponsored by Senator Karen Mayne, deals with allowing individual tax payers the choice of checking a box on their income tax return that would dedicate money to a fund that would be used by the Division of Housing and Community Development to either purchase or cleanup properties that are contaminated with methamphetamine. The entities that could apply to this fund would be national non-profit organizations that are in the business of assisting with low-income housing. This Bill would also not affect the Division Decontamination Specialist certification program.

SB 143 (Killpack) Sunset Act and Repealers Reauthorizations

This bill reauthorizes certain state statutes and programs that would otherwise sunset before the 2010 Annual General Session of the Utah Legislature. This reauthorization includes the Solid and Hazardous Waste Act and the Used Oil Management Act. This bill is currently on the second reading calendar of the Senate waiting to be voted on.

SB 193 (Urquardt) Salvage Vehicles Amendments. No Language is available on this bill

This bill modifies the Motor Vehicle Business Regulation Act by amending provisions relating to salvage vehicles.

HB 45 (Aagard) Per Diem and Travel Expenses for State Boards and Commissions

The Government Operations Interim Committee recommended this bill. This bill modifies the Administrative Services Code and specifically defines terms and modifies procedures for the establishment of per diem rates by the Division of Finance for a member of a state board, commission, council, or committee in the executive branch of state government. This bill passed the Senate.

HB 147 (Cosgrove) Resource Recovery by Governmental Entities

This bill requires certain state and local governmental entities to recycle certain materials. This bill defines terms and requires a first or second class county and a state or municipal agency located in a first or second class county to recycle certain materials. This bill has been held, and likely will not pass.

HB 316 (Wimmer) Time Limitations for Prosecution of Environmental Crimes

This bill modifies the Criminal Code regarding the time limitation on prosecution of environmental crimes. This bill requires that a prosecution for a violation of Title 19, Environmental Quality Code, shall be commenced

within four years after facts constituting the violation have been reported in writing to a prosecutor having responsibility and jurisdiction to prosecute the offense.

HB 321 (Harper) State Agency Structure Task Force

This bill creates the State Agency Structure Task Force and specifies its membership and duties. This bill requires the Task Force to review the organization and management of state agencies and make recommendations to improve efficiency, effectiveness, and the state agencies' missions by identifying workable and cost-effective alternatives; establishes task force membership, duties, and salaries and designates staff for the task force; and requires that the task force present a final report to the Legislative Management Committee.

HB 322 (Hendrickson) Tire Recycling Fee Modifications

This bill makes technical corrections and increases the waste tire recycling fee for certain tires from \$1 to \$2 (specifically larger semi-truck tires only). The waste tire restricted account continues to decrease. To keep the fund viable, the fees need to be increased. The waste tire restricted account pays for assistance in cleaning up waste tire piles around the state, as well as reimburses tire recyclers.

HB 368 (McIff) Underground Storage Tank Amendments

House Bill (HB) 368 – Underground Storage Tank Amendments, sponsored by Representative Kay McIff, deals with Amendments to the UST Program. The Bill has been named and numbered, but has no text associated with it as of yet. However, the Division met with Representative McIff beforehand to discuss the items that would be incorporated into the Bill. The Bill would increase the coverage limit of the Petroleum Storage Tank (PST) Fund from 1 million to 2 million dollars, and limits the amount of money the Fund can reimburse to any one company over the course of a single fiscal year. If the coverage limit increases, the Actuary has informally estimated that it would not have a noticeable impact on the PST Fund. Out of approximately 4,000 release sites the Division has closed, only six facilities have exceeded the 1 million dollar coverage limit. Also, during the discussion with Representative McIff, it was decided that the deductible would not be increased because small owner/operators already have difficulty paying the deductible.

Another item to be incorporated into HB 368 is the Division developing a way to provide funding to 3rd parties for their review of the work that is completed to cleanup a facility. There are a number of complications that would be involved in implementing this provision.

HB 404 (Newbold) Disclosure of Real Property/Meth. Contamination

HB 404 – Disclosure of Real Property / Methamphetamine Contamination, sponsored by Representative Merlynn Newbold, addresses the disclosure of real property that is contaminated by methamphetamine. This Bill has also been named and numbered, but has no language associated with it at this point, and would not significantly affect the Division's Decontamination Specialist certification program.

Carlton Christensen asked what Representative Newbold's intent is with this Bill. Mr. Johnson explained that the intent is to specifically require disclosure of methamphetamine contamination to prospective purchasers of property.

Kevin Murray added that the State of Utah currently has an anti-stigma statute that does not require landowners or brokers to disclose stigma related events, which includes felonies that have been committed on the property. The Bill is meant to circumnavigate this anti-stigma statute and require disclosure.

HB 434 (Edwards) Amendments to Department of Environmental Quality

This bill amends provisions relating to the authority of the Department of Environmental Quality. However, at this time, no language exists in this bill.

Michael Brehm requested an update on HB 379 (**Michael E. Noel**), Environmental Litigation Bond. This bill deals with setting up a litigation panel if there are arguments and differences between government entities that a litigation board could help resolve.

B. Budget Update

Dennis Downs explained that severe ongoing budget cuts are taking place in various state programs, including UDEQ. The Division of Solid and Hazardous Waste is unique as it does not receive general fund money that can be cut or taken. However, the Division does have to help with the shortfalls in other divisions in UDEQ. All divisions in UDEQ are taking approximately a 15% budget cut, and this amount may increase depending on revenue projections that will come in next week.

Mr. Downs stated that there is discussion among legislators to furlough employees or cut employees' hours to 35 hours a week until the budget deficit is met. Mr. Downs stated that even though budget shortfalls exist and employees may be furloughed, and/or be required to work a reduced work week, he is confident that the Division can maintain the required regulatory oversight needed.

Mr. Downs further clarified that most of the funds utilized by the Division come from the Environmental Quality Restricted Account. This account is funded by fees that are charged at all the solid and hazardous waste facilities in Utah. These fees have consistently been lower over the last few years; therefore, the Environmental Restricted Account balance is decreasing rapidly. The amount needed to fund the required programs should be about \$600,000 per month. However, only about \$400,000 is being received. Discussions are currently underway to see if the fees need to be adjusted to ensure costs are covered and the Environmental Quality Restricted Account remains a viable funding source.

Mr. Johnson added that the Division of Environmental Response and Remediation (DERR) was originally budgeted for approximately 1.5 million dollars in General Fund money for fiscal year 2009. The DERR has been able to absorb all of the budget cuts by eliminating three vacant positions. The cut to the budget was approximately \$300,000.00. The majority of this funding was used for emergency response and preparedness activities and administrative costs for the Voluntary Cleanup Program

C. Board Appointment updates

Dennis Downs provided an update on Board member terms and status of filling vacancies. Mr. Downs stated that all Board members whose terms expire in 2009 will be recommended for reappointment. The only exception is Craig Anderson, who cannot be reappointed because he has served two complete four-year terms. Mr. Downs asked for input from the Board regarding Mr. Anderson's position and Mr. Craig Forster's position. The Governor's Office has elected to fill both these positions at the same time in May.

Carlton Christensen reminded the Board that the election of the Board Chairman and Vice-Chairman will take place during the March meeting and that he has no intention to seek reappointment as the Board Chairman. Mr. Christensen encouraged all interested to consider the position.

D. Scheduling of next meeting

The next Board meeting will be held on March 12, 2009 at 1:30 p.m., in the Utah Department of Environmental Quality, (Conference Room 101), located at 168 North 1950 West, (Bldg. #2), SLC.

VIII. Adjourn

The meeting adjourned at 2:31 p.m.